

1 JAFFE, RAITT, HEUER & WEISS, P.C.
2 Scott R. Torpey Cal. SB#153763
3 storpey@jaffelaw.com
4 27777 Franklin Road, Suite 2500
5 Southfield, MI 48034
6 Telephone: 248.351.3000
7 Fax: 248.351.3082

8 And
9 WORTHE, HANSON & WORTHE
10 Jeffrey A. Worthe Cal. SB#080856
11 jworthe@whwlawcorp.com
12 1851 E. First St., Ste. 900
13 Santa Ana, California 92705
14 Telephone: (714) 285-9600
15 Fax: 714-285-9700
16 Attorneys for Defendant United Air Lines, Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 All Nippon Airways Company, Ltd.,

14 Plaintiff,

15 vs.

16 United Air Lines, Inc.,

17 Defendant.

Case No.07-03422 EDL

**DEFENDANT UNITED AIRLINES, INC.'S
REPLY IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER; DECLARATION
OF SCOTT R. TORPEY**

DATE: December 18, 2007

TIME: 9:00 a.m.

CTRM:

JUDGE: Elizabeth D. Laporte

TABLE OF CONTENTS

Table of Authorities ii

TABLE OF AUTHORITIES

Rules

Fed. R. 26(d)	1
---------------	---

1 Defendant, United Air Lines, Inc., ("United") by and through its attorneys, Jaffe Raitt Heuer
2 & Weiss, P.C., hereby submits its Reply in Support of Motion for Protective Order:

3 In its opposition to United's motion for protective order the Plaintiff All Nippon Airways
4 Company, Ltd., ("ANA") repeatedly states that there is no priority among parties concerning
5 depositions. While this may be true, it is equally true that this Court may require that depositions be
6 taken in a particular order under Fed. R. 26(d). In this case, an order requiring that United be
7 permitted to depose ANA's person most knowledgeable ("PMK") on the issue of the parties'
8 Ground Handling Agreement ("GHA") and Annexes thereto is appropriate where, but for ANA's
9 unjustified refusal to produce its PMK in the absence of a Rule 26(c) protective order motion (which
10 forced United to incur the expense and inconvenience of filing a motion to compel) United would
11 already have obtain the discovery it seeks from ANA's PMK on November 30, 2007, the date for
12 which United originally noticed the PMK's deposition on September 12, 2007.

13 Despite this Court's statements in its November 29, 2007, Order Shortening Time, which
14 specified that the March 15, 2007, deadline by which ANA's PMK must be deposed "is an outer
15 limit" and "ANA should already be designating or have designated a PMK and proposing time for
16 that deposition" (Doc. No. 40), ANA did not identify its PMK and/or propose a time for his
17 deposition until December 6, 2007 — well after United filed this motion and ANA submitted its
18 response memorandum. (See **Exhibit A** to Declaration of Scott Torpey, attached hereto as **Exhibit**
19 **1.**) With ANA finally having provided dates in January 2008 for the deposition of its PMK on the
20 Ground Handling Agreement ("GHA"), on December 7, 2007, United requested that ANA'S
21 counsel provide dates in February 2008 for ANA to take the deposition of United's PMK. (See
22 **Exhibit B** to Declaration of Scott Torpey, email to ANA counsel of December 7, 2007.¹

23 ANA presents this Court with inaccurate and extraneous considerations in an attempt to
24 deflect attention from its refusal to reasonably cooperate in the discovery process. For example,

25
26 ¹ Hopefully, ANA's counsel will provide the requested dates for February and United can
27 (Continued)

ANA states that United has not provided dates for the depositions of its pilots. This is misleading. The parties have been holding January 23 to 25, 2008, open for these depositions. ANA is well aware that the pilots' schedules will not be available until late December, at which points their depositions can be confirmed.

Moreover, in an ironic about-face, ANA now faults United for not providing ANA with dates of availability for United's PMK witness, despite ANA's insistence that the SGHA is irrelevant and its (entirely unsupported) assertion that "the SGHA is a standard form contract used by almost all international airlines that was signed by both parties with little or no negotiation of the terms. Consequently, both parties would have **the same** information regarding the SGHA. . . ." (Doc. No. 41, pg. 3 (emphasis added)).² ANA made its first request for PMK dates on November 2, 2007, **after** it had refused to produce its own PMK in response to United's deposition notice and **before** November 19, 2007, when this Court ordered it to produce its PMK. (See Doc. No. 41-3, pg. 2.) Just two days after this Court entered its order, ANA sent a letter to United demanding production of its PMK, stating, "As to UAL's PMK Ground Handling Agreement witnesses I've asked you and written for deposition dates **on several occasions** and I have received no response." (Doc. No. 41-4, pg. 1 (emphasis added)). If ANA really had demanded on *several* occasions (the first being prior to the hearing on United's motion for protective order) that United provide it with PMK deposition dates, then it necessarily recognized the relevance of PMK testimony on the issue of the SGHA, and one must ask why ANA refused to produce its PMK in the first place, forced

(. Continued)

withdraw this motion and avoid the hearing set for December 18, 2007.

² If ANA actually believed this to be true, it would be unnecessary to depose United's PMK at all, much less to oppose United's effort to depose ANA's PMK first. In any event, this argument "puts the cart before the horse" by stating what the outcome of discovery on the SGHA issue will be before any discovery has occurred. ANA's unsupported position that there is nothing new for the parties to learn in relation to the SGHA and its Annexes also strongly suggests that ANA will provide nothing more than a "warm body" as a PMK on this issue, rather than the truly knowledgeable person United seeks to depose. Hopefully, this will not be the case.

1 United to file a motion to compel despite United's efforts to obtain cooperation from ANA, and
2 required the parties and this Court to attend a hearing on United's motion to compel. Frankly,
3 ANA's actions speak louder than its words — it clearly is not the cooperative party here and should
4 not be permitted to take unfair advantage of its refusal to produce its PMK.

5 s/Scott R. Torpey, Cal. SB#153763

6 Jaffe, Raitt, Heuer & Weiss

7 27777 Franklin Road, Suite 2500

8 Southfield, Michigan 48034-8214

9 Phone: (248) 351-3000

10 E-mail: storpey@jaffelaw.com

11 And

12 WORTHE, HANSON & WORTHE

13 Jeffrey A. Worthe Cal. SB#080856

14 jworthe@whwlawcorp.com

15 1851 E. First St., Ste. 900

16 Santa Ana, California 92705

17 Telephone: (714) 285-9600

18 Fax: 714-285-9700

19 Attorneys for Defendant United Air Lines, Inc.

1 **PROOF OF SERVICE**

2 I declare as follows:

3 I am a resident of the State of Michigan and over the age of eighteen years, and not a party to
 4 the within action; my business address is 27777 Franklin Road, Suite 2500, Southfield, Michigan 90017.
 5 On December 7, 2007, I served the foregoing document described as Defendant United Airlines, Inc.'s
 Reply in Support of Motion for Protective Order; Declaration of Scott R. Torpey on the interested parties
 in this action follows:

- 6 ☐ by transmitting via facsimile the documents listed above to the fax number set fourth below
 7 on this date. This transmission was reported as complete without error by a transmission
 8 report issued by the facsimile machine upon which the said transmission was made
 immediately following the transmission. A true and correct copy of the said transmission is
 attached hereto and incorporated herein by this reference.
- 9 ☐ by placing the document listed above in a sealed envelope with postage thereon fully prepaid,
 in the United States mail at Southfield, Michigan addressed as set forth below
- 10 ☒ by electronic transmission. I caused the document(s) listed above to be transmitted by
 11 electronic mail to the individuals on the service list as set forth below.
- 12 ☐ by placing the document listed above in a sealed envelope and affixing a pre-paid air bill, and
 causing the envelope to be delivered to a _____ agent for Delivery.
- 13 ☐ by personally delivering the document listed above to the persons at the address set forth
 below.

14 Marshall S. Turner
 15 Condon & Forsyth LLP
 7 Times Square
 16 New York, NY 10036

Frank A Silane
 Rod D. Margo
 Scott D. Cunningham
 Condon & Forsyth LLP
 1901 Avenue of the Stars, Suite 850
 Los Angeles, California 90067-6010

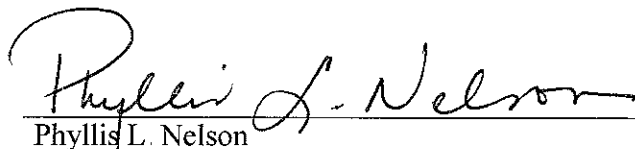
17 Jeffrey A. Worthe
 18 Worthe, Hanson & Worthe
 1851 East First Street, Ninth Floor
 Santa Ana, California 92705

19 I am readily familiar with the firm's practice of collection and processing correspondence for
 20 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with
 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party
 21 served, service is presumed invalid if postal cancellation date or postal meter date is more than one day
 after date of deposit for mailing in affidavit.

22 Executed on December 7, 2007 at Southfield, Michigan.

23 ☒ I declare under penalty of perjury under the laws of the State of Michigan that the above is
 24 true and correct.

25 ☒ I declare that I am employed in the office of a member of the bar of this court at whose
 26 direction the service was made.

27 
 28 Phyllis L. Nelson